

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI**

DAVID OPPENHEIMER,	)	
	)	
Plaintiff,	)	Cause No. 4:13-cv-02542-SPM
vs.	)	
	)	
GRAMOPHONE, LLC et al.,	)	
	)	
Defendants.	)	

**DEFENDANTS' ANSWER AND AFFIRMATIVE/OTHER  
DEFENSES TO PLAINTIFF'S COMPLAINT**

Defendants Gramophone, LLC, Andrew Yawitz and Kimberly Yawitz ("Defendants"), by and through their undersigned counsel, submit this Answer and Affirmative/Other Defenses to the Complaint filed by Plaintiff David Oppenheimer ("Plaintiff"). To the extent any allegations in the Complaint are not expressly admitted, Defendants deny those allegations.

Defendants further answer, state, and allege as follows:

1. To the extent the allegations of Paragraph 1 constitute a prayer for relief, Defendants are not required to respond to them. In the event a further response is required, Defendants deny that Plaintiff is entitled to any relief.
2. Defendants are not required to answer the allegations contained in Paragraph 2 because they seek or assert a legal conclusion. To the extent any answer is required, Defendants admit that this Court has jurisdiction over this matter.
3. Defendants are not required to answer the allegations contained in Paragraph 3 because they seek or assert a legal conclusion. To the extent any answer is required, Defendants admit that this Court has personal jurisdiction over Defendants. Except as expressly admitted, Defendants deny the allegations contained in Paragraph 3.

## **PARTIES**

4. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 and on that basis deny the same.

5. Defendants admit the allegations contained in Paragraph 5.

6. Defendants admit the allegations contained in Paragraph 6.

7. Defendants admit the allegations contained in Paragraph 7.

## **COUNT I (Infringement of Copyrights)**

8. Defendants incorporate their responses to the paragraphs above as their response to Paragraph 8.

7.<sup>1/</sup> Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 and on that basis deny the same.

8. Defendants are not required to answer the allegations contained in Paragraph 8 because they seek or assert a legal conclusion. To the extent any answer is required, Defendants admit that the U.S. Copyright Act grants copyright owners various exclusive rights, including the right to reproduce a copyrighted work in copies and the right to distribute a copyrighted work to the public. As to the allegations in Paragraph 8 concerning the application of these rights to Plaintiff, Defendants are without knowledge or information sufficient to form a believe as to their truth and on that basis denies them..

9. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of Paragraph 9 and on that basis deny the same. Defendants are not required to answer the remaining allegations contained in

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<sup>1/</sup> Plaintiff's Complaint contains two paragraphs numbered "7" and two paragraphs numbered "8." The responses in this Answer track the numbering contained in Plaintiff's Complaint.

Paragraph 9 because they seek or assert a legal conclusion. To the extent any answer is required, Defendants deny the remaining allegations contained in Paragraph 9.

10. Defendants deny the allegations contained in Paragraph 10.

11. Defendants deny the allegations contained in Paragraph 11.

12. Defendants are not required to answer the allegations contained in Paragraph 12 because they seek or assert a legal conclusion. To the extent any answer is required, Defendants deny the allegations of Paragraph 12.

**COUNT II**  
**(Removal of Copyright Management Information)**

13. Defendants incorporate their responses to the paragraphs above as their response to Paragraph 13.

14. Defendants deny the allegations contained in Paragraph 14.

15. Defendants state that 17 U.S.C. § 1202(b) speaks for itself.

16. Defendants are not required to answer the allegations contained in Paragraph 16 because they seek or assert a legal conclusion. To the extent any answer is required, Defendants deny the allegations of Paragraph 16.

WHEREFORE, Defendants respectfully request the Court to dismiss the Complaint and/or enter judgment in their favor, award Defendants their costs, and any such additional relief as the Court may deem appropriate under the circumstances or to which Defendants may be entitled.

**AFFIRMATIVE/OTHER DEFENSES OF DEFENDANT**

Defendants submit their affirmative and/or other defenses to Plaintiff's complaint:

1. The Complaint fails to state claims upon which relief may be granted.

2. Plaintiffs' damage, if any, should be reduced because Plaintiff failed to mitigate his damages.

3. The Complaint, and each and every claim for relief therein, is barred by 17 U.S.C. § 507(b).

4. The Complaint, and each and every claim for relief therein, is barred by the doctrine of unclean hands.

5. The Complaint, and each and every claim for relief therein, is barred by the doctrines of acquiescence, waiver, and/or estoppel.

6. The Complaint, and each and every claim for relief therein, is barred on the ground that any purported use of the work described in the Complaint was licensed.

7. The Complaint, and each and every claim for relief therein, is barred on the grounds that any purported use of the work described in the Complaint was fair.

8. Defendants reserve the right to advance and allege additional affirmative defenses as they may become known during the discovery process or investigation, and to amend this Answer accordingly.

WHEREFORE, Defendants respectfully request the Court to dismiss the Complaint and/or enter judgment in their favor, award Defendants their costs, and any such additional relief as the Court may deem appropriate under the circumstances or to which Defendants may be entitled.

Respectfully submitted,

BRYAN CAVE LLP

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Attorneys for Defendants

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 16th day of July, 2014, a true and correct copy of the foregoing electronically filed with the Clerk of the Court using the CM/ECF system which will send such notification to the following:

Marshal Hoekel  
130 East Lockwood Ave.  
St. Louis, MO 63119

*Attorney for Plaintiff*

/s/ Christopher M. Blaesing